



#8

Our Docket No: 3099P017

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:)
)
Britton)
)
Serial No.: 09/412,993) Art Unit: Not Yet Assigned
)
Filed: October 5, 1999)
)
For: PROVIDING AUDIENCE FLOW IN A PERSONAL) Examiner: Not Yet Assigned
TELEVISION DEVICE)
)
)
)
)

PETITION TO FILE ON BEHALF OF NON-SIGNING INVENTOR (37 C.F.R. §1.47(b))

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicant respectfully petitions to file the application on behalf of the non-signing inventor, Mr. Layne Britton. Support for this petition appears in the STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NON-SIGNING INVENTOR (37 C.F.R. §1.47(b)).

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: December 19, 2001

Libby H. Hope
Reg. No. 46,774

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026
(303) 740-1980

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JAN 29 2002

OFFICE OF PETITIONS



Our Docket No: 3099P017

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent Application of:)	
)	
Britton)	
)	
Serial No.: 09/412,993)	Art Unit: Not Yet Assigned
)	
Filed: October 5, 1999)	
)	Examiner: Not Yet Assigned
For: PROVIDING AUDIENCE FLOW IN A PERSONAL)	
TELEVISION DEVICE)	
)	
)	
)	

STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NON-SIGNING INVENTOR (37 C.F.R. §1.47)

This statement is made as to the exact facts that are relied upon to establish the diligent effort made to secure the execution of the declaration by the non-signing inventor for the above-identified patent application before deposit thereof in the Patent and Trademark Office.

This statement is being made by the available persons having first-hand knowledge of the facts recited herein.

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I, MARY WARINNER, attempted to contact the inventor in the application in question, Mr. Layne Britton, on several occasions, including on or about April 16, 2001, April 17, 2001, May 1, 2001, June, 2001, and August, 2001. I left a message for Mr. Britton regarding the nature of the call, and to return my phone call on at least one of those occasions. Mr. Britton never returned my phone calls. Since I did not have a forwarding address for Mr. Britton, I was not able to send Mr. Britton the application, drawings, and oath/declaration for signature.

Dated: 12.18.07

By: Mary Warner
Mary Warner

Address: Blakely Sokoloff et al.
5285 SW Meadows Rd.
Suite 101
Lake Oswego OR 97035

I, DEBBIE PELOQUIN, attempted to contact the inventor in the application in question, Mr. Layne Britton, on several occasions. During our first conversation on or about October 8, 2001, I introduced myself and the nature of the call. I explained to him that an application naming him as an inventor was filed, and that we needed his signature on an oath/declaration and an assignment. I was able to obtain Mr. Britton's current address, and forwarded the documents to Mr. Britton on October 8, 2001 (see Exhibit A attached hereto). The documents were received and signed for by a "Britton" on October 10, 2001. We currently do not have receipt of this, but we obtained this information from the carrier's hotline.

On or about November 7, 2001, I called Mr. Britton to remind him that the signed documents were needed. I left a message with Mr. Britton, but he did not return the phone call.

On or about November 7, 2001, a second attempt (see Exhibit B attached hereto) was made to send the documents to Mr. Britton. However, on or about November 13, 2001, the documents came back as being "undeliverable" (see Exhibit C attached hereto).


Dated: 12-19-01

By: Debbie Peloquin
Debbie Peloquin

Address: 8055 E Tufts Ave. #1300
Denver, CO 80237

I, LIBBY HOPE attempted to contact the inventor in the application in question, Mr. Layne Britton, on several occasions, including December 7, 2001 and December 10, 2001. One phone call was a failed attempt as Mr. Britton did not answer the phone. The second phone call resulted in about a 10 minute conversation with Mr. Britton, explaining the nature of the call. I explained to Mr. Britton that he was the inventor on an application which required signatures on associated documents. Mr. Britton appeared to not know what I was talking about, and explained that he would look for the documents and call me back. I explained that there was a very fast-approaching deadline to which Mr. Britton responded he would call me back by "10:00 the next day" (December 8, 2001). Mr. Britton did not call back the next day or any subsequent day. I have not been able to get a hold of Mr. Britton since speaking with him on December 10, 2001.

Dated: 12/19/01

By: 
Libby Hope


Address: BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN
8055 E. ~~10TH~~ TUFTS AVE,
SUITE 1300
DENVER, CO 80237

7
It is respectfully submitted that the inventor in the application in question has by his actions refused to sign papers, as corroborated by the statements above. Furthermore, as evidenced by the statements above, diligent efforts have been made to obtain executed documents from the non-signing inventor, Mr. Layne Britton for almost 8 months now, but to no avail. Consequently, filing on behalf of a non-signing inventor under 37 C.F.R. 1.47(b) is necessary.

→ only 2, per perquis due

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: December 19, 2001



Libby H. Hope
Reg. No. 46,774

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026
(303) 740-1980

EXHIBIT A

FedEx USA Airbill
ExpressFedEx
Tracking
Number

8017 2871 8379

Form
10, 11, 12

0235

Sender's Copy

1 From Please print and press hard. Sender's FedEx Account Number 2425-4429-3
Date 10-8-01

Sender's Name Libby Hope Phone (303) 740-1980

Company BLAKELY SOKOLOFF TAYLOR ZOF

Address 8055 E TUFTS AVE FL 13

City DENVER

State CO ZIP 80237

Dept./Floor/Suite/Room

2 Your Internal Billing Reference 3099.P017 OPTIONAL
First 24 characters will appear on invoice.

3 To Recipient's Name Mr. Layne Britton Phone ()

Company

Address 677 Boise Ave.

We cannot deliver to P.O. boxes or P.O. ZIP codes.

City Los Angeles

State CA

ZIP 90064

Dept./Floor/Suite/Room

Peel and Stick FedEx USA Airbill

See back for application instructions.

Questions? Visit our Web site at fedex.com
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By using this Airbill you agree to the service conditions on the back of this Airbill
and in our current Service Guide, including terms that limit our liability.

4a Express Package Service

☐ FedEx Priority Overnight
Next business morning

☒ FedEx Standard Overnight
Next business afternoon

Packages up to 150 lbs.
Delivery commitment may be later in some areas.

☐ FedEx First Overnight
Earliest next business morning
delivery to select locations

☐ FedEx 2Day
Second business day
FedEx Envelope rate not available. Minimum charge: One-pound rate

☐ FedEx Express Saver
Third business day

☐ NEW FedEx Extra Hours
Later drop-off with next business
afternoon delivery to select locations

4b Express Freight Service

Packages over 150 lbs.
Delivery commitment may be later in some areas.

☐ FedEx 1Day Freight*
Next business day

☐ FedEx 2Day Freight
Second business day

☐ FedEx 3Day Freight
Third business day

* Call for Confirmation

* Declared value limit \$500

5 Packaging

☒ FedEx Envelope*

☐ FedEx Pak*
Includes FedEx Small Pak, FedEx
Large Pak, and FedEx Sturdy Pak

☐ Other Pkg.
Includes FedEx Box, FedEx
Tube, and customer pkg.

6 Special Handling

☐ SATURDAY Delivery
RESTRICTIONS
Available only for FedEx Priority
Overnight and FedEx 2Day
to select ZIP codes

☐ SUNDAY Delivery
RESTRICTIONS
Available only for FedEx Priority
Overnight to select ZIP codes

Include FedEx address in Section 3.
☐ HOLD Weekday
at FedEx Location
RESTRICTIONS
Not available with
FedEx First Overnight

☐ HOLD Saturday
at FedEx Location
RESTRICTIONS
Available only for FedEx Priority
Overnight and FedEx 2Day
to select locations

Does this shipment contain dangerous goods?

☐ No ☐ Yes
One box must be checked.
As per attached
Shipper's Declaration

☐ Dry Ice
Dry Ice, 9, UN 1845 x kg

☐ Cargo
Aircraft
Only

Dangerous Goods (incl. Dry Ice) cannot be shipped in FedEx packaging or with FedEx Extra Hours service.

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender
Acct. No. in Section
1 will be billed.

☐ Recipient

☐ Third Party

☐ Credit Card

☐ Cash/Check

FedEx Acct. No.
Credit Card No.

Exp.
Date

Total Packages

Total Weight

Total Declared Value*

1

\$.00

FedEx Use Only

*Our liability is limited to \$100 unless you declare a higher value. See back for details.

8 Release Signature

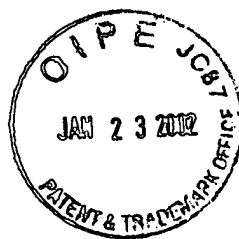
Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature
and agree to indemnify and hold us harmless from any resulting claims.

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Exhibit A?

EXHIBIT B

FedEx USA Airbill
ExpressFedEx
Tracking
Number

0297 2871 8644

Form
10, Feb.

0215

SAC23

Sender's Copy

1 From Please print and press hard.

Date 11/7/01

Sender's FedEx
Account Number

2425-4429-3

Sender's
Name Layne Britton

Phone (303) 740-1980

Company BLAKELY SOKOLOFF TAYLOR ZOF

Address 8055 E TUFTS AVE FL 13

Dept./Floor/Suite/Room

City DENVER

State CO

ZIP 80237

2 Your Internal Billing Reference

First 24 characters will appear on invoice.

3099P017

3 To

Recipient's
Name Layne Britton

Phone ()

Company ReplayTV / Sonic Blue

Address 677 Boise Ave.

To "HOLD" at FedEx location, print FedEx address.

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Dept./Floor/Suite/Room

City Los Angeles

State CA

ZIP 90066

Peel and Stick FedEx USA Airbill

See back for application instructions.

Questions? Visit our Web site at fedex.com

or call 1-800-Go-FedEx® (800)463-3339.

By using this Airbill you agree to the service conditions on the back of this Airbill
and in our current Service Guide, including terms that limit our liability.

4a Express Package Service

☐ FedEx Priority Overnight
Next business morning☒ FedEx Standard Overnight
Next business afternoon

Packages up to 150 lbs.

Delivery commitment may be later in some areas.

☐ FedEx First Overnight
Earliest next business morning
delivery to select locations☐ FedEx 2Day
Second business day☐ FedEx Express Saver
Third business day☐ NEW FedEx Extra Hours
Later drop-off with next business
afternoon delivery to select locations

FedEx Envelope rate not available. Minimum charge: One-pound rate

4b Express Freight Service

Packages over 150 lbs.
Delivery commitment may be later in some areas.☐ FedEx 1Day Freight*
Next business day☐ FedEx 2Day Freight
Second business day☐ FedEx 3Day Freight
Third business day

* Call for Confirmation.

5 Packaging

Declared value limit \$500

☒ FedEx Envelope*☐ FedEx Pak*
Includes FedEx Small Pak, FedEx
Large Pak, and FedEx Sturdy Pak☐ Other Pkg.
Includes FedEx Box, FedEx
Tube, and customer pkg.

6 Special Handling

☐ SATURDAY Delivery
RESTRICTIONS
Available only for FedEx Priority
Overnight and FedEx 2Day
to select ZIP codes☐ SUNDAY Delivery
RESTRICTIONS
Available only for FedEx Priority
Overnight to select ZIP codes☐ HOLD Weekday
at FedEx Location
RESTRICTIONS
Not available with
FedEx First Overnight☐ HOLD Saturday
at FedEx Location
RESTRICTIONS
Available only for FedEx Priority
Overnight and FedEx 2Day
to select locations

Does this shipment contain dangerous goods?

☐ No ☐ Yes
One box must be checked.As per attached
Shipper's Declaration☐ Dry Ice
Dry Ice, 9, UN 1845☐ Cargo
Aircraft
Only

Dangerous Goods (incl. Dry Ice) cannot be shipped in FedEx packaging or with FedEx Extra Hours service.

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

☒ Sender
Acct. No. in Section
1 will be billed.☐ Recipient☐ Third Party☐ Credit Card☐ Cash/CheckFedEx Acct. No.
Credit Card No.Exp.
Date

Total Packages

Total Weight

Total Declared Value¹

\$.00

¹Our liability is limited to \$100 unless you declare a higher value. See back for details.

FedEx Use Only

8 Release Signature

Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature
and agree to indemnify and hold us harmless from any resulting claims.

406

0189348036

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EXHIBIT C

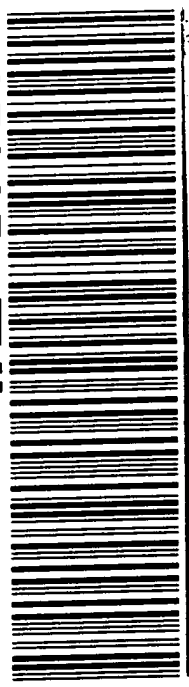
O I P E
JAN 23 2002
PRIORITY MAIL OFFICE

FedEx
STANDARD OVERNIGHT
THU

Deliver By:
08 NOV 01
A1

TRK# 8297 2871 8644 FORM 0215

LAX
90066 -CA-US WZ SMOA



☐ FedEx 2Day
Second business day
FedEx Envelope (not available for international delivery to select locations)
FedEx Express Saver
Third business day
NEW FedEx Extra Hours
Last order pickup time
Guaranteed delivery to select locations
Packages over 150 lbs.
Delivery commitment may be later in some areas

4b Express Freight Service

☐ FedEx 1Day Freight*
Next business day
FedEx 2Day Freight
Second business day
FedEx 3Day Freight
Third business day

5 Packaging

☒ FedEx Envelope*
Call for Confirmation
☐ FedEx Pak*
Includes FedEx Box, FedEx Small Pak, FedEx Large Pak, and FedEx Surety Pak
☐ Other Pak
Includes FedEx Box, FedEx Small Pak, FedEx Large Pak, and FedEx Surety Pak

6 Special Handling

☐ SATURDAY Delivery
Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes
☐ SUNDAY Delivery
Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes
☐ HOLD Weekday
at FedEx Location
Not available with FedEx First Overnight to select locations
☐ HOLD Saturday
at FedEx Location
Not available with FedEx First Overnight to select locations

7 Payment

Bill to: ☐ Sender ☐ Recipient ☐ Third Party ☐ Credit Card
Enter FedEx Acct. No. or Credit Card No. below.
Acct. No.
Sender
Acct. No. (if Special)
Acct. No. (if Recipient)
We bill to P.O. boxes or P.O. ZIP codes.
Is "HOLD" at FedEx location, print FedEx address.

8 Release Signature

Sign to authorize delivery without obtaining a signature
By signing you authorize: "To deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims."
Questions? Visit our Web site at fedex.com
or call 1-800-Go-FedEx (662-633-3333)
SPR-NEW-01m 1/2001-FedEx 1251815 © 1994-2001 FedEx PRINTED IN U.S.A.

Total Packages
Total Weight
Total Charges
Credit Card

Your liability: "We need to ship unless you declare a higher value. See the FedEx Service Guide for details."
Sign to authorize delivery without obtaining a signature

9 Release Signature

By signing you authorize: "To deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims."
Questions? Visit our Web site at fedex.com
or call 1-800-Go-FedEx (662-633-3333)
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Total Packages
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or call 1-800-Go-FedEx (662-633-3333)
SPR-NEW-01m 1/2001-FedEx 1251815 © 1994-2001 FedEx PRINTED IN U.S.A.

Total Packages
Total Weight
Total Charges
Credit Card

FedEx
USA Airbill
Express

1 From This portion can be removed for Recipient's records
Date 11/17/01 FedEx Tracking Number 8297 2871 8644

Sender's Name Layne Britton Phone 303 754-4252
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

2 Your Internal Billing Reference 3099PD17

3 To Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

4 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

5 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

6 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

7 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

8 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

9 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

10 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

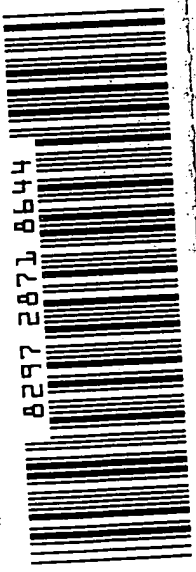
11 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

12 Recipient's Name Layne Britton Phone
Company BLAKELY SOKOLOFF TAYLOR ZOF
Address 8055 E TUFTS AVE FL 13
City DENVER State CO ZIP 80237

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JAN 29 2002

OFFICE OF PETITIONS



8297 2871 8644

City Los Angeles State CA ZIP 90006

0189348036

406

Patent

In re the Patent Application of:

Serial No.: 09/412,993

Filed: October 5, 1999

For: PROVIDING AUDIENCE FLOW IN A PERSONAL
TELEVISION DEVICE



Art Unit: Not Yet Assigned

Examiner: Not Yet Assigned

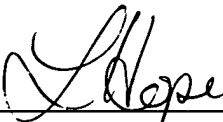
- I. I, LIBBY H. HOPE, employed at 8055 E. Tufts Avenue, Suite 1300, Denver, CO 80237, am the person signing the declaration on the above-identified application on behalf of the non-signing inventor and make this statement as to the facts establishing proprietary interest.
- II. As of the date I signed the declaration for this application, the proprietary interest in this invention belonged to REPLAYTV, INC., and I am authorized to sign the statement on behalf of the company, my title being Attorney at Law (California 167066; Colorado 30008; USPTO 46,774).
- III. Although there is no assignment or written agreement to assign, a sufficient proprietary interest is demonstrated by the attached STATEMENT ON BEHALF OF ENTITY WITH SUFFICIENT PROPRIETARY INTEREST THAT NONSIGNING INVENTOR WAS EMPLOYEE OR OTHERWISE OBLIGATED TO ENTITY WITH SUFFICIENT PROPRIETARY INTEREST WHEN INVENTION MADE and LEGAL

MEMORANDUM IN SUPPORT OF PROPRIETARY INTEREST establishing that a court of competent jurisdiction would, by the weight of authority in that jurisdiction, award title in the invention to the legal entity on whose behalf I have authority to sign.

- IV. PROOF OF NEED TO PREVENT IRREPARABLE DAMAGE OR PRESERVE THE RIGHTS OF THE PARTIES: Since signing on behalf of the non-signing inventor is by an entity showing a sufficient proprietary interest, this statement also recites facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage. Since this application has already been filed, failure to take this action will result in the application becoming abandoned and is, therefore, necessary to preserve the rights of the parties.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: December 19, 2001



Libby H. Hope
Reg. No. 46,774

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026
(303) 740-1980



Our Docket No: 3099P017

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re the Patent Application of:

Britton

Serial No.: 09/412,993

Filed: October 5, 1999

For: PROVIDING AUDIENCE FLOW IN A PERSONAL
TELEVISION DEVICE

)
)
)
)
) Art Unit: Not Yet Assigned
)
)
) Examiner: Not Yet Assigned
)
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)
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**STATEMENT ON BEHALF OF ENTITY WITH SUFFICIENT PROPRIETARY
INTEREST THAT NONSIGNING INVENTOR WAS EMPLOYEE OR
OTHERWISE OBLIGATED TO ENTITY WITH SUFFICIENT PROPRIETARY
INTEREST WHEN INVENTION MADE**


I. I, LIBBY H. HOPE, at 8055 East Tufts Avenue, Suite 1300, Denver, CO 80237, make this statement in support of the STATEMENT ESTABLISHING PROPRIETARY INTEREST BY PERSON SIGNING ON BEHALF OF NONSIGNING INVENTOR in the above-referenced application on behalf of the entity with sufficient proprietary interest.

II. I confirm on behalf of the entity with sufficient proprietary interest that the omitted inventor, Mr. Layne Britton, made the above-identified application while in the employ of REPLAYTV, INC. (hereinafter REPLAYTV), formerly a California corporation having had a principal place of business at 1945 Charleston Road, Mountain View, CA 94043 at the time that Mr. Britton was hired and employed with REPLAYTV; that REPLAYTV hired Mr. Britton in California; and that the invention to which the application in question relates was created by virtue of Mr. Britton's

employment with REPLAYTV, and performed at least as part of Mr. Britton's duties under his employment with REPLAYTV.

- III. REPLAYTV, INC. was acquired by SONICBLUE INCORPORATED on August 1, 2000 (hereinafter SONICBLUE), a Delaware corporation, having a principal place of business at 2841 Mission College Blvd., Santa Clara, CA 95054. REPLAYTV, INC. is now a wholly-owned subsidiary of SONICBLUE having the same state of incorporation and same principal place of business as SONICBLUE.

Dated: December 19, 2001

By:  _____
Libby H. Hope for REPLAYTV, INC.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

On re the Patent Application of:

Britton

Serial No.: 09/412,993

Art Unit: Not Yet Assigned

Filed: October 5, 1999

Examiner: Not Yet Assigned

For: PROVIDING AUDIENCE FLOW IN A PERSONAL TELEVISION DEVICE

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JAN 29 2002

OFFICE OF PETITIONS

LEGAL MEMORANDUM IN SUPPORT OF PROPRIETARY INTEREST

- I. I, LIBBY H. HOPE, employed at 8055 E. Tufts Ave., Suite 1300, Denver, CO 80237, state that I am duly recognized to practice law in California, and am familiar with the law of this jurisdiction (License #167066).
- II. With respect to the proprietary interest asserted in this invention by REPLAYTV, INC. (hereinafter REPLAYTV) having its principal place of business at 2841 Mission College Blvd, Santa Clara, CA 95054, I have studied the statements made on behalf of the entity with sufficient proprietary interest, and which are filed in this application.
- III. By the weight of authority in California, title of this invention would be awarded to REPLAYTV. My reasons for reaching this conclusion are set forth below.
- IV. At the time that Mr. Britton was employed with REPLAYTV, REPLAYTV was a California corporation, and both Mr. Britton and REPLAYTV were subject to comply with the laws of California. REPLAYTV was acquired by


SONICBLUE INCORPORATED (hereinafter SONICBLUE) on August 1, 2001, and is now a Delaware Corporation.

- V. Under California Labor Code Section 3300, an "employer" means ... (c) Every person including any public service corporation, which has any natural person in service." Since REPLAYTV was a service corporation having natural persons in service, REPLAYTV was an employer of the non-signing inventor, Mr. Layne Britton, at the time the invention was conceived and/or reduced to practice. Likewise, Mr. Britton was an employee of REPLAYTV.
- VI. According to California Labor Code Section 2860, "Everything which an employee acquires by virtue of his employment, except the compensation which is due to him from his employer, belongs to the employer..."
- VII. While the "[m]ere existence of employer-employee relationship is not by itself sufficient to entitle employer to partake of benefits of employee's inventive genius", (Aero Bolt & Screw Co. v Iaia (1960) 180 CA2d 728, 5 Cal Rptr 53), "[w]here employee creates something as part of his duties under his employment, thing created is employer's property unless, by appropriate agreement, employee retains some right in or with respect to product." (Zahler v Columbia Pictures Corp. (1960) 180 CA2d 582, 4 Cal Rptr 612.)
- VIII. As attested to in STATEMENT ON BEHALF OF ENTITY WITH SUFFICIENT PROPRIETARY INTEREST THAT NON-SIGNING INVENTOR WAS AN EMPLOYEE OR OTHERWISE OBLIGATED TO ENTITY WITH SUFFICIENT PROPRIETARY INTEREST WHEN INVENTION MADE, the invention was acquired by Mr. Britton by virtue of his employment with REPLAYTV, and at least part of Mr. Britton's duties under his employment were to invent for REPLAYTV. Furthermore, there was no agreement that gave Mr. Britton the right to retain rights in such creation.

IX. Based on the facts in the accompanying STATEMENT BY PERSON HAVING FIRST HAND KNOWLEDGE THAT NON-SIGNING INVENTOR WAS AN EMPLOYEE OR OTHERWISE OBLIGATED TO ENTITY WITH SUFFICIENT PROPRIETARY INTEREST WHEN INVENTION MADE, and the statutes and cases cited above, it is the good faith belief of the undersigned that a court of competent jurisdiction would by the weight of authority in that jurisdiction award title of the invention to the applicant herein, and as such, that a proprietary interest by such applicant has been established.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: December 19, 2001



Libby H. Hope
Reg. No. 46,774

12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026
(303) 740-1980



PTO/SB/17(09-00)

Approved for use through 10/31/2002. OMB 0651-0032

Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL FOR FY 2002**TOTAL AMOUNT OF PAYMENT (\$)** 1570.00**Complete if Known:**Application No. 09/412,993Filing Date October 5, 1999First Named Inventor Layne BrittonGroup Art Unit Not Yet AssignedExaminer Name Not Yet AssignedAttorney Docket No. 3099P017**METHOD OF PAYMENT (check one)**

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:

Deposit Account Number 02-2666

Deposit Account Name _____

- ☐ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17

2. ☒ Payment Enclosed:

☒ Check☐ Money Order☐ Other**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
101	740	201	370	Utility application filing fee	_____
106	330	206	165	Design application filing fee	_____
107	510	207	255	Plant filing fee	_____
108	740	208	370	Reissue filing fee	_____
114	160	214	80	Provisional application filing fee	_____
SUBTOTAL (1) \$					_____

2. EXTRA CLAIM FEES

			Extra Claims	Fee from below	Fee Paid
Total Claims	_____	- 20** =	_____	X _____	= _____
Independent Claims	_____	- 3** =	_____	X _____	= _____
Multiple Dependent	_____			_____	= _____

****Or number previously paid, if greater; For Reissues, see below.**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
103	18	203	9	Claims in excess of 20	_____
102	84	202	42	Independent claims in excess of 3	_____
104	280	204	140	Multiple dependent claim, if not paid	_____
109	84	209	42	**Reissue independent claims over original patent	_____
110	18	210	9	**Reissue claims in excess of 20 and over original patent	_____
SUBTOTAL (2) \$					_____

RECEIVEDDocket No.: 3099P017
Application No.: 09/412,993JAN 29 2002
OFFICE OF PETITIONS

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

<u>Large Entity</u>		<u>Small Entity</u>		<u>Fee Description</u>	<u>Fee Paid</u>
<u>Fee</u>	<u>Fee</u>	<u>Fee</u>	<u>Fee</u>		
<u>Code</u>	<u>(\$)</u>	<u>Code</u>	<u>(\$)</u>		
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex-parte reexamination	
099	8,800	099	8,800	Request for inter partes reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for response within first month	
116	400	216	200	Extension for response within second month	
117	920	217	460	Extension for response within third month	
118	1,440	218	720	Extension for response within fourth month	1440.00
128	1,960	228	980	Extension for response within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive unavoidably abandoned application or unavoidably delayed payment of issue fee	
141	1,280	241	640	Petition to revive unintentionally abandoned application or unintentionally delayed payment of issue fee	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	130.00
123	50	123	50	Petitions related to provisional applications	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	For filing a submission after final rejection (see 37 CFR 1.129(a))	
149	740	249	370	For each additional invention to be examined (see 37 CFR 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	
Other fee (specify) _____					
Other fee (specify) _____					

SUBTOTAL (3) \$1570.00

*Reduced by Basic Filing Fee Paid

SUBMITTED BY:Typed or Printed Name: Libby H. HopeSignature:  Date: December 19, 2001Reg. Number: 46,774 Telephone Number: 303-740-1980